

# Where there is a will, there is a way

Learn about the different types of wills, their purpose and preparation, when professional assistance is advised, and the pitfalls of self-prepared wills.

Actively planning for death is not a joyous task. But preparing a will can prevent potential financial, tax, and asset distribution problems for your family and other beneficiaries. A will is a legal document that describes how you want your property distributed at your death. It is a blueprint that guides the *executor* (male) or *executrix* (female) in distributing your estate. It names your executor or executrix, names who shall receive your property, and indicates what property or share each heir will receive. A person who makes a will is called a *testator* (male) or *testatrix* (female). When a person dies leaving a will, he or she is said to have died *testate*. A person who dies without a will dies *intestate*. (See the companion publication in the Estate Planning series.) In North Carolina, any person of sound mind who is at least 18 may make a will.

## What a Will Does for You

A will is the supporting central part of your estate plan. It ensures that your decisions will be carried out upon your death:

- Transfers assets to the beneficiaries of your choice.
- Names a guardian for any minor children and provides for management of assets until a minor child reaches a responsible age.
- Provides for care of adult children with special needs.
- Names your chosen executor and controls how your estate is settled.
- Directs or gives discretion to your executor to make donations of conservation easements on your real property.

## Why You Need a Will

If you do not have a will when you die, your property will be divided according to intestate

succession rules, which may not distribute your assets as you would have desired.

Married couples often assume that they do not need a will because they own everything with a *right of survivorship*. At the death of one spouse, all property should transfer to the other. However, property can exist, such as a wrongful death award, that does not pass via survivorship. Such property will be distributed by the rules of intestate succession to all eligible heirs, not the spouse alone. Following the surviving spouse's death, the property will also be divided as per the rules of intestate succession. This may result in excessive taxes for the second spouse's estate when he or she dies.

If both spouses die simultaneously, their property will be probated. *Probate* is a court process to settle the estate. Where there has been inadequate estate planning or there are unresolved family disputes, probate can tie up property transfer and result in significant legal costs. Dying intestate can lead to some undesirable circumstances while the estate is being settled.

The rules don't provide for recommendations for choosing a guardian for a minor child. If a minor child inherits property worth \$1,500 or more, the court will appoint a guardian to manage it until the child reaches age 18. The appointed guardian may not be to the liking of the parties involved.

If a beneficiary predeceases an *intestate decedent* (the property owner who dies) or renounces his/her interest, the property may pass to someone unintended by the decedent.

If a decedent dies intestate, the estate administrator must post a probate bond and may have to pay bond premiums. A *probate bond* guarantees that the estate's creditors, heirs, and beneficiaries receive the distributions to which they are entitled if an executor or administrator misappropriates funds. This expense could be avoided by waiving bonding through a provision in a will.

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